STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES Land Division Honolulu, Hawaii 96813

August 28, 2009

Board of Land and Natural Resources State of Hawaii Honolulu, Hawaii

OAHU

Issuance of Revocable Permit to Hilton Hawaiian Village for Beach Activities at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:portion of 021.

APPLICANT:

Hilton Hawaiian Village, whose business and mailing address is 2005 Kalia Road, Honolulu, Hawaii 96815-1999.

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waikiki, Honolulu, Oahu, identified by Tax Map Key: (1) 2-3-037:portion of 021 as shown on the attached map labeled Exhibit A.

AREA:

To be determined. See Remarks Section.

ZONING:

State Land Use District:

Urban

City & County of Honolulu LUO:

Public Precinct

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Beach Activities Purposes.

CONSIDERATION:

Based on 10¢ per square foot per day for the requested area. See Remarks Section.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO
Registered business name confirmed:	YES <u>x</u>	NO
Applicant in good standing confirmed:	YES x	NO

APPLICANT REQUIREMENTS:

None.

REMARKS:

In the past, Hilton Hawaiian Village (HHV) has coordinated the organization of beach activities party on the Duke Kahanmoku Beach for its guests. The Chairperson has authorized right-of-entry permits for such events pursuant to the authority delegated by the Board at its meeting of September 28, 2001 (item D-4).

Recently, HHV requests (Exhibit B) to use a portion of Duke Kahanamoku Beach on September 8, 2009 to organize a beach party for the McDonald's of Australia. The event will accommodate about 550 participants. There will be about 20 umbrellas and chairs on the event day, but no other improvements, for example, sound equipment or tent, will be placed on the beach.

Early last year, the Department started issuing wedding permits subject to the conditions attached as Exhibit C. After discussion among the staffs about different type of commercial activities, the Division believes that any application for commercial activities which does not comply with the conditions at Exhibit C shall be submitted to the Board requesting a revocable permit.

It is anticipated that HHV may ask for similar approval in the future. To accommodate the future requests, staff recommends the Board authorize issuance of a revocable permit to HHV, subject to conditions in Exhibit C. The revocable permit will act as general conditions for the event. When HHV submit the specific date(s) to the Department, an authorization will be issued to HHV pursuant to the revocable permit approved, further subject to payment of fee based on the requested area and other appropriate conditions based on the event.

Staff did not solicit comment from other governmental agencies since similar requests have been processed in the past. HHV has been in compliance with the terms and conditions of the right-of-entry permits issued in the past, including public access to the shoreline. Staff has no objection to the request.

RECOMMENDATION:

That the Board authorize the issuance of a revocable permit to Hilton Hawaiian Village covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- 1. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
- 2. Review and approval by the Department of the Attorney General; and
- 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

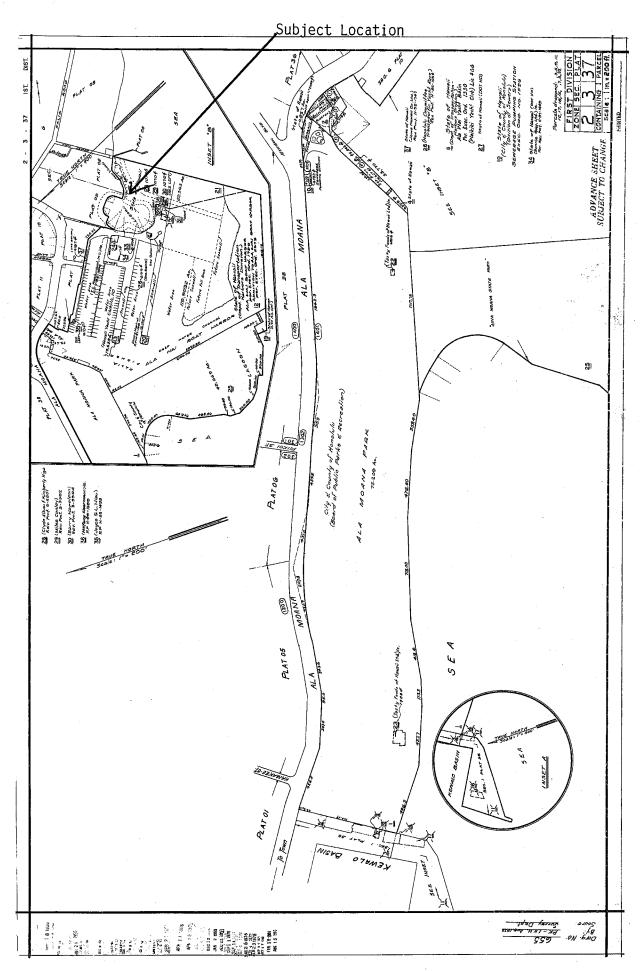
Respectfully Submitted,

Barry Cheung

District Land Agent

APPROVED FOR SUBMITTAL:

Aura H. Thielen, Chairperson





August 4, 2009

Barry Cheung
Oahu District Supervising Land Agent
Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, Hawaii 96809

Re:

Request for Non Exclusive Right of Entry on Duke Kahanamoku Beach

Tuesday, September 8, 2009

Aloha Mr. Cheung:

Hilton hereby requests to secure a Non-Exclusive Right of Entry for the portion of Duke Kahanamoku Beach that is located just makai of the Hilton Hawaiian Village Hotel Lagoon Tower. The enclosed site plan shows the location of the beach area which is identified as zone 4 and its approximate size of 6,000 square feet.

The dimensions for our requested Non-Exclusive Right of Entry are 300 feet running Diamond Head-Ewa by 20 feet running mauka-makai for a total of 6,000 square feet.

Our request for a Non-Exclusive Right of Entry is for Tuesday September 8, 2009.

The purpose for our request is to conduct a Beach Party for McDonald's of Australia, with approximately 550 participants. We will set up starting at 8:00 AM and take down and clean the areas before 6:00 PM, September 8, 2009.

The area will be used solely for the McDonald's of Australia Beach Party. There will not be any alcoholic beverages, sound equipment or tents. There will be 20 umbrellas, chairs and beach games.

The required liability insurance for the event will be provided by Hilton. Hilton will oversee the event. Hilton will maintain and clean up the area following the event.

This event will help in our efforts to attract more visitors to Waikiki.

Sincerety

John Murakami

Director of Events/Catering

JAM/pwb



Unencumbered Land, State Public Beaches General Terms and Conditions for Commercial Activity

- 1. The set-up, event, and restoration of the right-of-entry area or premises shall be limited to the date(s) and time(s) provided by the Applicant in the application, which in no event shall exceed two hours.
- 2. The right-of-entry permit is subject to the payment of a non-refundable fee based on 10¢ per square foot per event per day, and further subject to a minimum fee of \$20.00 per event.
- 3. Applicant shall procure at Applicant's own expense, and maintain during the entire period of the right-of-entry permit, from an insurance company or companies licensed to do business in the State of Hawaii, a policy or policies of comprehensive public liability insurance in an amount of at least \$300,000 per incident and \$500,000 aggregate insuring the State of Hawaii against all claims for personal injury, death, and property damage; that said policy shall cover the entire right-of-entry area or premises, including all improvements and grounds and all roadways or sidewalks on or adjacent to the said right-of-entry area or premises in the control or use by Applicant. Applicant shall furnish the Department of Land and Natural Resources (the "Department") with a certificate(s) showing the policy(s) to be initially in force and naming the State of Hawaii as additional insured and keep said certificate(s) on deposit during the entire period. The procuring of this policy shall not release or relieve Applicant of its responsibility under this right-of-entry permit as set forth herein or limit the amount of its liability under this right-of-entry.
- 4. Applicant shall indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (a) any act or omission on the part of Applicant relating to Applicant's use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises; (b) any failure on the part of Applicant to maintain the right-of-entry area or premises and areas adjacent thereto in Applicant's use and control, and including any accident, fire or nuisance growing out of or caused by any failure on the part of Applicant to maintain the area or premises in a safe condition; and (c) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of Applicant's non-observance or non-performance of any of the terms, covenants, and conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.
- 5. At all times herein, Applicant shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition.
- 6. Applicant shall be responsible for cleaning and restoring the right-of-entry area or premises to its original condition or a condition satisfactory to the Department upon completion of each day's event or activity. All trash shall be removed from the right-of-entry area or premises. If the Department finds that the Applicant has failed to clean and restore the right-of-entry area or premises to the Department's satisfaction, Applicant agrees to and shall reimburse the Department for all costs and expenses associated with cleaning and restoring the area or premises to its original condition.



7. Applicant shall comply with all of the requirements of all federal, state, and municipal, authorities and observe all federal, state, and municipal laws applicable to the right-of-entry area or premises now in force or which may be in force.

8. NO ALCOHOLIC BEVERAGES SHALL BE SERVED OR PERMITTED IN THE RIGHT-OF-ENTRY AREA OR PREMISES.

- 9. Applicant shall not permit commercial solicitation including the sale of any item or advertising of commercial products to be conducted in conjunction with the permitted activity (no banners, handouts, flyers, posters, etc.).
- 10. Applicant shall be responsible for providing any security deemed necessary or appropriate for the right-of-entry area or premises during the requested event or activity.
- 11. Applicant shall supply to Land Division a name and local telephone number of a contact person who will be available at all times during the scheduled event.
- 12. No person shall drive a motor vehicle on the right-of-entry area or premises.
- 13. Applicant in the exercise of the right-of-entry permit shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general. Applicant shall not engage in any activity that may obstruct, impede, or interfere with the public use of the surrounding area or any public access to the area.
- 14. No accessories, structures, devices, amplified instruments, appliances, apparatus or equipment of any type whatsoever shall be placed on or within the right-of-entry area or premises, including but not limited to the following:
 - arches;
 - bowers;
 - alters;
 - tables;
 - chairs;
 - kahilis;
 - tents and or tarps;
 - event signage of any type including banners, sandwich boards;
 - kiosks or carts:
 - stanchions, posts, ropes or similar equipment for the purpose of demarcation of the right-of-entry area; and
 - surfboards, windsurf boards, kayaks or other ocean recreation equipment;

with the exception of the following:

- o loose flowers, leis, bouquets, corsages or boutonnieres;
- o unamplified musical instruments, including a conch shell;
- o doves or butterflies for releases;
- o a limited number of chairs as strictly necessary for the support of elderly, infirm, or disabled persons attending the event(s);
- cameras and camera equipment;
- o other non-obtrusive hand-carried wedding accessories;
- o small podium or cake stand, not to exceed three feet square in size; and
- o ocean vessels/equipment used exclusively for the purpose of scattering ashes during authorized funeral services.

- 15. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the right-of-entry area or premises, Applicant shall immediately stop all premises utilization or work or both and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 in compliance with Chapter 6E, Hawaii Revised Statutes.
- 16. Best management practices shall be employed to avoid having silt or dirt enter the ocean.
- 17. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
- 18. The right-of-entry permit is revocable and terminable at anytime for any reason in the sole and absolute discretion of the Chairperson. As long as the revocation or termination is not as a result of any fault of, or default by Applicant of any provision of this right-of-entry permit, then Applicant may apply for a refund of any advanced rental payment made based upon the percentage of use denied by the revocation or termination.
- 19. The right-of-entry permit is subject to Hawaii Administrative Rules, Title 13, Sub-title 10, Chapter 221, Unencumbered Public Lands, as amended. Rules are available for review at http://hawaii.gov/dlnr/land/administrative-rules. Applicant is required to familiarize himself with these rules. Applicant acknowledges that he has read, understands, and agrees to abide by these rules.
- 20. The right-of-entry permit or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
- 21. The Department of Land and Natural Resources reserves the right to impose additional, terms and conditions as it deems necessary or appropriate while the right-of-entry is in force.
- 22. All representatives of any commercial operator or service provider at the site must carry a copy of this permit with them and make it available for inspection at all times during the event(s). Failure of any operator or provider to carry this permit and make it available for inspection upon request by any DLNR official or enforcement officer shall constitute a violation under this permit.
- 23. The applicant as the responsible party shall ensure that all terms and conditions of the permit are adhered to and met. In most cases, the applicant will be a wedding coordinator or professional. All other professionals that may be associated with the event, such as a videographer, photographer, a minister, etc., shall be required to and by possessing a copy of this document do hereby agree to also abide by the terms and conditions of this permit and shall carry a copy of this permit on their person at all times during the event.
- 24. Violations of one or more permit conditions may result in administrative action, imposition of fine(s), and the rejection of future right-of-entry applications.
- 25. Applicant shall comply with other written conditions, which may be imposed by the Chairperson of the Board of Land and Natural Resources.